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SUPREME COURT, U. S.
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APR 5 1972
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In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-6259

PETER McENTEGGART,
PETITIONER,

v.

JOHN M. CATALDO et al.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

PETITION NOT PRI

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Blanchard Press, Inc., Boston, Mass. — Law Printers

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Opinions Below

The opinion of the court of appeals is reported at 451 F.2d 1109 and is reproduced as Appendix A to the petition. In the district court, petitioner's complaint was dismissed without opinion (Pet. App. C).

Jurisdiction

The judgment of the court of appeals (Pet. App. B) was entered on December 1, 1971. The petition for writ of certiorari was filed on February 29, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

Was petitioner denied due process of law by the failure of respondents to renew his teaching contract without an administrative or judicial hearing, where the failure to renew was based on substantial reasons related to the educational process and petitioner has not contradicted the factual bases for the reasons?

Statement

Petitioner was a non-tenured associate professor of mathematics at Bridgewater State College during the academic year 1970-1971. During the course of the academic year, his performance was evaluated and it was determined not to renew his contract (Pet. App. D; 451 F.2d at 1111). No reasons were given to petitioner at the time this decision was reached, and petitioner subsequently commenced a civil action in the United States District Court for the District of Massachusetts, alleging, *inter alia*, that he had been denied due process by the failure of respondents to (1) supply him with a statement of reasons and/or (2) accord him the opportunity for a hearing prior to a final decision not to renew his contract. 451 F.2d at 1110.

Subsequent to the filing of the action but prior to the hearing in the district court on petitioner's application for a preliminary injunction, respondents voluntarily supplied him with a statement of the reasons for the failure to re-

new his contract.[1] The district court thereupon denied injunctive relief, and later, following the filing of a motion for summary judgment, the district court ordered judgment for the respondents and dismissed the complaint. Pet. App. C.

On appeal, the court of appeals affirmed. The court reasoned that petitioner's "claim is fundamentally not responsive to . . . [the] standard" enunciated by the court in *Drown* v. *Portsmouth School District*, 451 F.2d 1106 (C.A. 1, 1971). In *Drown*, the court of appeals stated that a teacher "must allege . . . that each of the stated reasons is trivial, or is unrelated to the educational process or to working relationships within the educational institution, or is wholly unsupported by a basis in fact." 451 F.2d at 1111. The court of appeals concluded:

> "We need not look beyond what was evidently the dispositive reason, that McEnteggart was 'difficult to get along with' and a 'threat to the harmony' of the department. The reason finds support in the record." *Ibid.*

From a judgment affirming the dismissal of his complaint, petitioner now seeks review by a writ of certiorari.

Argument

The petition presents no substantial question warranting further review by this Court. The decision below — which is supported by a carefully reasoned opinion — is correct.

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[1] The court of appeals erroneously stated in its opinion that "the district court ordered the trustees to supply a statement of the reasons for non-renewal . . . ." This statement is not supported by the record and is contrary to the actual events.

As noted *supra*, petitioner was afforded the reasons for his non-renewal on the basis of the rule laid down in *Drown* v. *Portsmouth School District*, 435 F.2d 1182 (C.A. 1, 1970), *cert. den.* 402 U.S. 792 (1971). In attempting to establish a claim of bad faith in the decision not to renew his contract, petitioner failed to successfully attack the reasons given on any of the three grounds suggested by the court of appeals: that the reasons were unrelated to the educational process, were trivial, or were without factual support. Petitioner thus failed to sustain his burden in alleging sufficient bad faith to warrant a hearing, whether that hearing be administrative or judicial in nature. Respondents submit that the burden was properly on petitioner in order to maintain the proper balance between the interests of the teacher and public educational systems, and to preserve the advantages to such systems of having probationary or non-tenured teachers.[2]

While petitioner asserts that the real reasons for the non-renewal of his teaching contract were improper personal motives of his department chairman (Pet. 4; Pet. App. E), he failed, as the court of appeals found, to deal with the existing evidence in the record which supported the conclusion that the chairman acted on the basis of proper educational considerations and was joined in his decision by other responsible persons:

> "The department may well, as McEnteggart asserts, be purchasing harmony at the expense of scholarly potential. Even so, the college can surely prefer harmony in deciding which of its non-tenured faculty members will be granted new contracts. The reason is not trivial or unrelated to working relationships

[2] These considerations were advanced in greater detail in our brief *amicus curiae* in *Wisconsin Board of Regents, et al.* v. *Roth*, No. 71-162 (pp. 2-6), now *sub judice*.

within the college. Since McEnteggart does not, as he probably could not, challenge the conclusion that he is a threat to the harmony of the department or contest the superior's account of the incidents upon which the conclusion is based, he fails to claim under the third branch of the arbitrariness test that the reason is wholly unsupported by a basis in fact. In sum, his arbitrariness challenge misses its mark."
451 F.2d at 1111.

Conclusion

The petition for writ of certiorari should be denied.

Respectfully submitted,

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